

MICHIGAN DEPARTMENT OF TRANSPORTATION

«VENDOR»

CONTRACT FOR

INDEFINITE DELIVERY OF SERVICES

THIS CONTRACT is made and entered into this date of _____ by and between the Michigan Department of Transportation, hereinafter referred to as the “DEPARTMENT,” and «VENDOR», of «ADDRESS», hereinafter referred to as the “CONSULTANT.”

WITNESSETH:

WHEREAS, the DEPARTMENT desires to engage the CONSULTANT to provide professional services for «PROJDESC» on an as needed/when needed basis, such work collectively referred to hereinafter as the “SERVICES”; and

WHEREAS, the DEPARTMENT may issue work to the CONSULTANT by way of a written document defining such work and detailing the reimbursement conditions, such document to be called an “AUTHORIZATION”; and

WHEREAS, each AUTHORIZATION will define the terms of reimbursement as actual cost plus fixed fee not to exceed total basis, hereinafter referred to as “ACTUAL COST,” or as lump sum basis to be reimbursed upon the accomplishment of defined milestones, hereinafter referred to as “MILESTONE,” or as unit price per unit of work basis, hereinafter referred to as “WORK ITEM”; WORK ITEMS may be bid or agreed upon; and

WHEREAS, the DEPARTMENT and the CONSULTANT agree to follow a dispute resolution process in the event that problems occur with the SERVICES performed by the CONSULTANT or in the event that other problems arise related to this Contract or the SERVICES to be provided hereunder; and

WHEREAS, the SERVICES may be programmed with the use of federal funds administered by the United States Department of Transportation, Federal Highway Administration (FHWA);

NOW, THEREFORE, the parties agree that:

THE CONSULTANT WILL:

1. Only perform the SERVICES with a prior written AUTHORIZATION for such SERVICES. By its signature on this Contract, the CONSULTANT denotes its understanding that DEPARTMENT employees, including any DEPARTMENT Project Manager, do not have the authority to verbally assign work to the CONSULTANT. In the event that any DEPARTMENT employee attempts to assign SERVICES under this Contract without a written AUTHORIZATION specifically providing for such SERVICES, the CONSULTANT will refuse to do any such work and will immediately contact the respective DEPARTMENT Division's Contract Administrator. A sample AUTHORIZATION form is attached as Exhibit A.
2. Perform all SERVICES in conformity with the DEPARTMENT's applicable standards and guidelines.
3. During the performance of the SERVICES, be responsible for any loss of or damage to original documents belonging to the DEPARTMENT while they are in the CONSULTANT's possession. Restoration or replacement of lost or damaged original documents will be at the CONSULTANT's expense.
4. Maintain the original copies of all documents, calculations, reviews, and reports generated during the performance of the SERVICES. These documents will be referred to as the "DOCUMENTS." Such DOCUMENTS will be maintained in a safe and secure place and will be available for review by the DEPARTMENT or its representative.

The CONSULTANT will deliver to the DEPARTMENT those DOCUMENTS for which delivery is provided in the Scope of Services. Any DOCUMENTS not required for delivery to the DEPARTMENT will be maintained by the CONSULTANT for at least three (3) years from the date of completion of the construction of the project resulting from the SERVICES under this Contract. In the event that such construction is unreasonably delayed, the CONSULTANT may request permission for exemption from this provision. The CONSULTANT may not discard such DOCUMENTS prior to the above defined date without prior written approval from the DEPARTMENT.

5. Make such trips to confer with representatives of the DEPARTMENT and the FHWA as may be necessary in the carrying out of the SERVICES set forth in this Contract.
6. Upon completion of the SERVICES, deliver to the DEPARTMENT the work products defined in the Scope of Services.
7. Affix its professional endorsement upon all designs, specifications, estimates, and engineering data furnished to the DEPARTMENT, if applicable, and will comply with all requirements of 1980 PA 299 Section 2011; MCL 339.2011; MSA 18.425(2011).

8. Submit billings to the DEPARTMENT for the performance of SERVICES as follows:
- a. Billings for the SERVICES portion of this Contract will be on an ACTUAL COST basis, a MILESTONE basis, or a WORK ITEM basis, as defined in the particular AUTHORIZATION. The billings for SERVICES on an ACTUAL COST basis will be as defined in Section 16. The billings for SERVICES on a MILESTONE payment basis will be in accordance with the MILESTONE schedule in the Scope of Services and as incorporated in the AUTHORIZATION. Each billing for MILESTONE payment will only occur upon acceptance of all work detailed in the MILESTONE schedule in the Scope of Services for the specific MILESTONE. The billings for SERVICES on a WORK ITEM basis will be in accordance with the WORK ITEM costs in the Scope of Services and priced proposal and as incorporated in the AUTHORIZATION for such work.
 - b. The CONSULTANT agrees that the costs reported to the DEPARTMENT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The CONSULTANT also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.
 - c. The billings for SERVICES on an ACTUAL COST basis or a WORK ITEM basis will not be submitted more often than once per month for each AUTHORIZATION. Each billing for SERVICES will be submitted promptly, no more than sixty (60) days after the completion of the SERVICES for that billing. All billings for SERVICES provided prior to September 30 of any year must be received by the DEPARTMENT prior to October 10 of that year or a significant delay in payment will occur. The final billing for SERVICES on an ACTUAL COST basis will include any adjustments for provisional rates to actual rates.
 - d. The final billing for the SERVICES must be received within sixty (60) days of completion of the SERVICES. The DEPARTMENT may close the Contract and/or any AUTHORIZATION after the sixty (60) days have passed, and any costs due the CONSULTANT may not be reimbursed until completion of the audit by the DEPARTMENT. If an audit is not required, or if insufficient information is provided during the audit, the costs may be denied by the DEPARTMENT.
9. During the performance of the SERVICES, submit written progress reports to the DEPARTMENT that outline the work accomplished during the reporting period. Identify any problems, real or anticipated, associated with the performance of the AUTHORIZATION; and identify any deviations from the agreed upon work plan and schedule. In the event the CONSULTANT identifies any problem(s), the CONSULTANT will submit a plan to correct the problem(s) to the DEPARTMENT for consideration. The content and format of such written progress reports will be as defined

in the Scope of Services. The quantity, timing, period covered, and recipients of the progress reports will be as directed by the Project Manager.

As a part of the progress report, the CONSULTANT will report the actual hours of performance, the actual start, and, if necessary, an estimated completion date or an actual completion date, as may be further defined in the Scope of Services and as defined in the DEPARTMENT guidelines. In the event that the CONSULTANT does not submit a progress report for a particular month, the CONSULTANT is still required to submit any report or information required by this subsection.

10. Provide professional liability insurance, as further defined in Exhibit B, attached hereto and made a part hereof.
11. With regard to audits and record-keeping,
 - a. The CONSULTANT will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract or any AUTHORIZATION, said records to be hereinafter referred to as the "RECORDS." Separate accounts will be established and maintained for all costs incurred for SERVICES and SERVICES During Construction under this Contract and for all AUTHORIZATIONS.
 - b. The CONSULTANT will maintain the RECORDS for at least three (3) years from the date of final payment made by the DEPARTMENT under this Contract and any AUTHORIZATION. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract or any AUTHORIZATION, the CONSULTANT will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
 - c. The DEPARTMENT or its representative may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
 - d. If any part of the work is subcontracted, the CONSULTANT will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.
12. If the DEPARTMENT discloses its confidential information to the CONSULTANT, the CONSULTANT will maintain such information as confidential. Information provided by the DEPARTMENT will be deemed confidential if it is marked confidential or stated in writing to be confidential. The above obligations of confidentiality will not apply to:
 - a. Information for which the DEPARTMENT gives prior written permission for publication or use.

- b. Information that is required to be disclosed based on court order.

A violation of this provision will be considered a breach of this Contract, and the DEPARTMENT may terminate this Contract under the provisions of Section 25(b).

News releases pertaining to this Contract or the SERVICES to which it relates will not be made without prior written approval from the DEPARTMENT, and then only in accordance with explicit instructions from the DEPARTMENT. News releases made without the DEPARTMENT's approval will be considered a breach of the Contract, and the DEPARTMENT may terminate this Contract under the termination provisions of Section 25(b).

THE DEPARTMENT WILL:

13. Provide the CONSULTANT access to DEPARTMENT standards and information in its possession and related to the SERVICES that the CONSULTANT specifically requests, except for such standards and information as the CONSULTANT is specifically required to provide.
14. For SERVICES on an ACTUAL COST or MILESTONE basis, upon receipt of the proposed estimate, the DEPARTMENT will conduct negotiations with the CONSULTANT to determine the acceptable hours, costs, and fixed fee, as applicable, to be paid the CONSULTANT for the work of completing the SERVICES and/or MILESTONE(S). For SERVICES on a WORK ITEM basis, upon receipt of the proposal estimate, the DEPARTMENT will conduct negotiations with the CONSULTANT to determine the acceptable number, types, and cost(s) (except for low bid) of the WORK ITEM needed to complete the SERVICES. When mutual agreement is reached, the DEPARTMENT will issue a written AUTHORIZATION to the CONSULTANT to proceed with the work. Each AUTHORIZATION will include the scope of work, the effective date when the CONSULTANT may begin work, the completion date, and the agreed upon maximum compensation and fixed fee, if applicable, for the work. The AUTHORIZATION will detail whether the portion of the authorized amount will be reimbursed on a MILESTONE basis, an ACTUAL COST basis, or a WORK ITEM basis.

Such AUTHORIZATION will detail the expenses to be reimbursed on an ACTUAL COST basis for the portion of the SERVICES that will be reimbursed on an ACTUAL COST basis. Such costs are defined in Section 16 and will not exceed the maximum amount set forth in each AUTHORIZATION.

Such AUTHORIZATION will detail the payment schedule on a MILESTONE basis for the portion of the SERVICES that will be reimbursed on a MILESTONE basis. Such MILESTONE will be based on the percentages detailed in the Scope of Services as applied to the CONSULTANT's proposed total as negotiated.

Such AUTHORIZATION will detail the amount to be reimbursed on a WORK ITEM basis for the portion of the SERVICES that will be reimbursed on a WORK ITEM basis. Such costs will be in accordance with the defined WORK ITEM detailed in each AUTHORIZATION and will not exceed the maximum amount set forth in each AUTHORIZATION.

15. Make payment to the CONSULTANT after receipt of billings, subject to verification of progress in accordance with the provisions enumerated below. Within thirty (30) days of the receipt of the billing from the CONSULTANT, the DEPARTMENT will either approve the billing for payment or, in lieu of such approval, inform the CONSULTANT that such approval has not been given. Additionally, the DEPARTMENT will inform the CONSULTANT why the billing has not been approved and the actions, if any, required of the CONSULTANT to obtain such approval. Upon approval by the Project Manager, the billing will be submitted for payment. This subsequent payment process requires up to an additional thirty (30) days.
 - a. Compensation for SERVICES that will be reimbursed on an ACTUAL COST basis will be in accordance with the definition of such cost set forth in Section 16 and the terms of Section 17 and will not exceed the maximum amount set forth in each AUTHORIZATION.
 - b. Compensation for SERVICES that will be reimbursed on a MILESTONE basis will be in accordance with the MILESTONE payment schedule detailed in each AUTHORIZATION and will not exceed the maximum amount set forth in each AUTHORIZATION.
 - c. Compensation for SERVICES that will be reimbursed on a WORK ITEM basis will be in accordance with the defined WORK ITEM detailed in each AUTHORIZATION and will not exceed the maximum amount set forth in each AUTHORIZATION.
 - d. Payment for reimbursement for a proportionate share of the work performed as determined by the Dispute Resolution Process will be paid in accordance with the provisions of Section 19 and after the thirty (30) day acceptance period, as further defined in Exhibit C.
 - e. The DEPARTMENT may withhold from each billing for SERVICES that will be reimbursed on an ACTUAL COST basis, a MILESTONE basis, or a WORK ITEM basis a percentage of the requested payment; such percentage will be from zero percent (0%) to five percent (5%), as determined by the DEPARTMENT. The DEPARTMENT will not withhold any funds from payments for reimbursement for SERVICES during construction or for work performed as a result of the Dispute Resolution Process, as set forth in Section 30 of this Contract.

- f. Payment of any funds retained from the progress billings will be made upon acceptance of the SERVICES and satisfactory completion of an audit by the DEPARTMENT, but not later than one (1) year after acceptance of the SERVICES and the DEPARTMENT's receipt of the final billing.
- g. If the DEPARTMENT and the CONSULTANT agree, payment of any funds retained from the progress billings for work performed by a subconsultant may be made upon acceptance of the SERVICES performed by the subconsultant.

Reimbursement of ACTUAL COST pursuant to this section will not constitute a final determination by the DEPARTMENT of the allowability of such cost and will not constitute a waiver by the DEPARTMENT of any violation of the terms of this Contract committed by the CONSULTANT.

- 16. Determine that payment for costs of SERVICES that will be reimbursed on an actual cost plus fixed fee basis is in accordance with the following terms:
 - a. Direct Salary Costs: Actual labor costs of personnel performing the SERVICES. This cost will be based on the employees' actual hourly rates of pay and the actual hours of performance on the SERVICES, as supported by employee time and earning records. The DEPARTMENT will not reimburse the CONSULTANT for the premium portion of overtime pay unless the CONSULTANT has obtained prior written approval for such overtime from the DEPARTMENT.
 - b. Other Direct Costs: Actual costs of materials and services as may be required hereunder but that are not normally provided as part of the overhead of the CONSULTANT. All actual costs will be supported by proper receipts and proof of payments.
 - c. Overhead and Indirect Costs: A pro-rated portion of the actual overhead and indirect costs incurred by the CONSULTANT during work. The amount of overhead payment, including payroll overhead, will be calculated as applied rates to direct labor costs. Overhead and indirect costs will include those costs that, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs.
 - d. Facilities Cost of Capital: A pro-rated portion of the actual facilities cost of capital incurred by the CONSULTANT during work if the estimated facilities cost of capital was specifically identified in the cost proposal for this work.
 - e. Subconsultant Costs: Actual costs of subcontracts performing services. Amounts for fixed fees paid by the CONSULTANT to the subconsultant will not be considered actual costs of the CONSULTANT, but will be considered a part of the fixed fee of the CONSULTANT.

- f. Travel and Subsistence: Actual costs in accordance with and not to exceed the amounts set forth in the current State of Michigan Standardized Travel Regulations, incorporated herein by reference as if the same were repeated in full herein.
 - g. Fixed Fee: In addition to payments set forth under (a), (b), (c), (d), (e), and (f) above, the DEPARTMENT agrees to pay the CONSULTANT a fixed fee. It is agreed and understood that such amount will constitute full compensation to the CONSULTANT for profit and will not vary because of any differences between the estimated cost and the actual cost. Overruns in the actual cost of the services will not warrant an increase or adjustment in the amount of the fixed fee.
 - h. Reimbursement for costs incurred is subject to the cost criteria set forth in 48 C.F.R., Federal Acquisition Regulations, incorporated herein by reference as if the same were repeated in full herein.
17. Make payment to the CONSULTANT for the costs of SERVICES that will be reimbursed on an ACTUAL COST plus fee basis in accordance with the following:
- a. Progress payments may be made for reimbursement of amounts earned to date upon receipt of a billing and the written progress report. Progress payments will include direct salary costs, other direct costs, calculated amounts for overhead, facilities cost of capital, and fixed fee. Progress payments will not be made more than once a month.
 - b. In the event that the DEPARTMENT determines that the CONSULTANT is not currently eligible to receive any or all of the funds requested, it will promptly notify the CONSULTANT, stating the reasons for such determination.
 - c. Upon receipt by the DEPARTMENT of the required documents and any other accompanying information in a form satisfactory to the DEPARTMENT, the DEPARTMENT will process the payment request if the CONSULTANT is complying with its obligations pursuant to this Contract and the AUTHORIZATION.

IT IS FURTHER AGREED THAT:

- 18. The parties will consider the SERVICES to be complete when accepted by the DEPARTMENT. Such acceptance by the DEPARTMENT is not intended to nor does it relieve the CONSULTANT of any of its obligations and responsibilities herein.
- 19. The DEPARTMENT's maximum obligation for payment of funds for all AUTHORIZATIONS processed under this Contract is «CNOTEXD». The maximum obligation for payment of funds for any individual AUTHORIZATION under this Contract is «ANOTEXD».

DEPARTMENT funds in this Contract made available through legislative appropriations are based on projected revenue estimates. The DEPARTMENT may reduce the amount of this Contract and/or any AUTHORIZATION hereunder if the revenue actually received is insufficient to support the appropriation under which this Contract and/or any AUTHORIZATION is made.

Proportional compensation for work performed as a result of the Dispute Resolution Process (DRP) will be on the basis of actual cost and a fixed fee for profit. The proportion of such costs incurred that will be reimbursed, if any, will be as determined by the DRP. The DEPARTMENT and the CONSULTANT will maintain separate RECORDS for the costs incurred relative to the DRP. The allowability of such costs will be as determined by the DEPARTMENT's auditor. The determination of allowability under the provisions of this section is limited to the acceptability of the expense relative to the criteria described in Section 16(h). Such determination by the DEPARTMENT's auditor does not apply to the acceptability or completeness of work as determined by the DRP.

20. Changes in the time period, the maximum dollar amount, or the Scope of Services as set forth in an AUTHORIZATION will not be permitted without a prior written revised AUTHORIZATION. The maximum dollar amount of an AUTHORIZATION will not be increased without an accompanying and comparable increase in the Scope of Services in the AUTHORIZATION. The DEPARTMENT will neither pay nor be responsible for any costs incurred by the CONSULTANT prior to the award or subsequent to the expiration or termination of any such AUTHORIZATION or this Contract.
21. Any change in the scope, character, or term of this Contract or in the maximum amount as shown in Section 19 of this Contract will only be by award of a prior written amendment to this Contract by the parties.
22. In the event a written revised AUTHORIZATION becomes necessary due to the CONSULTANT's error or oversight, said changes will be at no additional cost to the DEPARTMENT.
23. When unreasonable delays are caused by circumstances or conditions that are not the fault of and are beyond the control of the CONSULTANT and are significant, as determined by the DEPARTMENT, the CONSULTANT may:
 - a. Submit a written request for an extension of time.
 - b. Submit a written request for an update to its labor and overhead rates in order to reflect the rates currently in effect for the firm when such changes to those rates are material.

The DEPARTMENT will provide written responses to such requests within thirty (30) days.

- c. In the event that the DEPARTMENT determines that an extension of time or an update in rates is warranted by the circumstances or conditions that are not the fault of and are beyond the control of the CONSULTANT, the DEPARTMENT will respond in writing by issuing a revised AUTHORIZATION, as provided for in Section 20. Such extension or granting of revised rates will not operate as a waiver by the DEPARTMENT of any of its rights herein set forth.
- d. In the event that the DEPARTMENT determines that an extension of time or an update in rates is **not** warranted by the circumstances or conditions, the DEPARTMENT will advise the CONSULTANT in writing of its determination. Such determination by the DEPARTMENT will be considered final and binding and not subject to further review or consideration.

Failure on the part of the CONSULTANT to submit a written request for an extension of time or an update to its labor and overhead rates will constitute a waiver of the request for extra compensation for any such delay or rate change. The filing of such notice by the CONSULTANT will not be construed to establish the validity of the request.

- 24. The DEPARTMENT and the CONSULTANT will agree on the Key People to be assigned to the Project Team prior to any work being performed. The CONSULTANT will not replace any Key People assigned to the Project Team without prior written approval from the DEPARTMENT. The DEPARTMENT has the right to disapprove proposed replacements, and the CONSULTANT is required to find alternative replacements that are acceptable to the DEPARTMENT. The replacement of Key People from the Project Team without the DEPARTMENT's prior written approval will be considered a breach of the Contract, and the DEPARTMENT may terminate this Contract under the termination provisions of Section 25(b). If a member of the Project Team who is one of the Key People leaves the Project Team, the CONSULTANT will replace that person with a person who is acceptable to the DEPARTMENT within thirty days, unless an extension of time is granted by the DEPARTMENT. Failure by the CONSULTANT to find an acceptable replacement to the Project Team within thirty days or within the time extension granted by the DEPARTMENT, if any, will be considered a breach of this Contract, and the DEPARTMENT may terminate this Contract under the termination provisions of Section 25(b). "Key People" are defined as those people whose qualifications and experience are essential to providing quality SERVICES. "Project Team" means the personnel assigned by the CONSULTANT and the subconsultant(s) who are responsible for the completion of the SERVICES.
- 25. The DEPARTMENT may terminate this Contract and/or any AUTHORIZATION(S) under this Contract for convenience or cause, as set forth below, before the SERVICES

are completed. Written notice of termination will be sent to the CONSULTANT. The CONSULTANT will be reimbursed in accordance with the following:

a. **Termination for Convenience:**

FOR COSTS TO BE REIMBURSED ON AN ACTUAL COST BASIS:

The CONSULTANT will be reimbursed for all costs incurred up to receipt of said Notice of Termination. Such reimbursement will be as set forth in Sections 16 and 17. The CONSULTANT will be reimbursed a proportionate share of the fixed fee based on the portion of the project that is complete as determined by the DEPARTMENT. The DEPARTMENT will receive the work product produced by the CONSULTANT under this Contract up to the time of termination, prior to the CONSULTANT being reimbursed. In no case will the compensation paid to the CONSULTANT for partial completion of SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

FOR COSTS TO BE REIMBURSED ON A MILESTONE BASIS:

The DEPARTMENT will pay the CONSULTANT for all MILESTONES achieved for which the DEPARTMENT receives the completed work product. The DEPARTMENT will pay a proportional share for the partially completed work product of any partially completed MILESTONE. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred. In no case will the compensation paid to the CONSULTANT for partial completion of the SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

FOR COSTS TO BE REIMBURSED ON A WORK ITEM BASIS:

The CONSULTANT will be reimbursed for all WORK ITEMS performed for which the DEPARTMENT receives the completed work product. The DEPARTMENT will pay a proportional share for the partially completed work product of any partially completed WORK ITEM. The value of such partially completed WORK ITEM will be determined by the DEPARTMENT based on actual costs incurred. In no case will the compensation paid to the CONSULTANT for partial completion of the SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

b. **Termination for Cause:**

In the event the CONSULTANT fails to complete any of the SERVICES in a manner satisfactory to the DEPARTMENT, and/or discloses the DEPARTMENT's confidential information, in violation of the provisions set forth in Section 12, and/or replaces any Key People without prior written approval

from the DEPARTMENT, as set forth in Section 24, and/or fails to find an acceptable replacement to the Project Team within thirty days or within the extension of time granted by the DEPARTMENT, if any, as set forth in Section 24, the DEPARTMENT may terminate this Contract and/or any AUTHORIZATION(S) pursuant to this Contract for cause. Written notice of termination will be sent to the CONSULTANT. The CONSULTANT will be reimbursed as follows:

FOR COSTS TO BE REIMBURSED ON AN ACTUAL COST BASIS:

The CONSULTANT will be reimbursed for SERVICES completed up to receipt of said Notice of Termination. The DEPARTMENT may pay a proportional share for the work product. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred up to the estimated value of the work product received by the DEPARTMENT, as determined by the DEPARTMENT. Such actual costs will be as set forth in Section 16. The CONSULTANT will be reimbursed a proportionate share of the fixed fee based on the portion of the project that is complete, as determined by the DEPARTMENT. The DEPARTMENT will receive the work product produced by the CONSULTANT under this Contract up to the time of termination, prior to the CONSULTANT being reimbursed. In no case will the compensation paid to the CONSULTANT for partial completion of the SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

FOR COSTS TO BE REIMBURSED ON A MILESTONE BASIS:

The CONSULTANT will be reimbursed for all MILESTONES achieved for which the DEPARTMENT receives the completed work product. The DEPARTMENT will not reimburse the CONSULTANT for any partially completed MILESTONE(S).

FOR COSTS TO BE REIMBURSED ON A WORK ITEM BASIS:

The CONSULTANT will be reimbursed for all WORK ITEMS performed for which the DEPARTMENT receives the completed work product. The DEPARTMENT may pay a proportional share for the work product of any partially completed WORK ITEM. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred up to the estimated value of the work product received by the DEPARTMENT as determined by the DEPARTMENT.

In the event that termination by the DEPARTMENT is necessitated by any wrongful breach, failure, default, or omission by the CONSULTANT, the DEPARTMENT will be entitled to pursue whatever remedy is available to it, including, but not limited to, withholding funds or off-setting against funds owed to the CONSULTANT under this

Contract, as well as any other existing or future contracts between the CONSULTANT and the DEPARTMENT, for any and all damages and costs incurred or sustained by the DEPARTMENT as a result of its termination of this Contract due to the wrongful breach, failure, default, or omission by the CONSULTANT. In the event of termination of this Contract and/or any AUTHORIZATION(S), the DEPARTMENT may procure the professional SERVICES from other sources and hold the CONSULTANT responsible for any damages or excess costs occasioned thereby.

In the event that the CONSULTANT disagrees with the DEPARTMENT regarding a determination of the completeness or value of SERVICES completed or the amount of reimbursement that is eligible under the provisions of this section, the CONSULTANT may invoke the alternative dispute process defined in Section 30.

26. The CONSULTANT specifically agrees that the DEPARTMENT retains the right to audit the RECORDS of the CONSULTANT, including the RECORDS that pertain to the costs incurred that are reimbursed on a MILESTONE basis. Such audits pertaining to the costs incurred reimbursed on a MILESTONE basis are for informational purposes only. Any adjustments that result from any such audits are specifically limited to those costs incurred that are reimbursed on an ACTUAL COST basis.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this Contract or any AUTHORIZATION or questions the allowability of an item of expense, the DEPARTMENT will submit to the CONSULTANT a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the CONSULTANT at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the CONSULTANT will (a) respond in writing to the responsible Bureau of the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE." The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the CONSULTANT may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE will refer to and apply the language of the contract. The CONSULTANT agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of

Audit Results. If the DEPARTMENT determines that an overpayment has been made to the CONSULTANT, the CONSULTANT will repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the CONSULTANT fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the CONSULTANT agrees that the DEPARTMENT will deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the CONSULTANT under this Contract or any other contract or payable to the CONSULTANT under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The CONSULTANT expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT's decision, only as to any item of expense the disallowance of which was disputed by the CONSULTANT in a timely filed RESPONSE.

27. All documents prepared by the CONSULTANT, including tracings, drawings, estimates, specifications, field notes, investigative studies, and other relevant documents are the property of the DEPARTMENT.
28. This Contract is personal to the parties and cannot be assigned. The CONSULTANT will not sublet any portion of the Contract or the SERVICES, as herein defined, without the prior written approval of the DEPARTMENT, and any such subcontracts will include all applicable provisions of this Contract.

After obtaining prior written approval from the DEPARTMENT to sublet a portion of the contract or the SERVICES, the CONSULTANT will submit to the DEPARTMENT any and all subcontracts, including amendments, that are individually or in combination in excess of Twenty-Five Thousand Dollars (\$25,000.00) prior to the CONSULTANT signing said subcontracts. The CONSULTANT will not enter into multiple subcontracts of lesser amounts for the purpose of avoiding such approval process.

Such approval of said contract is given solely for the purposes of the DEPARTMENT. Approval does not constitute an assumption of liability, a waiver, or an estoppel to enforce any of the requirements of this Contract, nor will any such approvals by the DEPARTMENT be construed as a warranty of the third party's qualification, professional standing, ability to perform the work being subcontracted, or financial integrity.

29. All questions that may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, the interpretation of designs and specifications, and the satisfactory and acceptable fulfillment of the terms of this Contract will be decided by the DEPARTMENT, except as provided for in the "Dispute Resolution Process," as defined in Operating Procedures by the DEPARTMENT.
30. The CONSULTANT and the DEPARTMENT specifically agree that, in the event that problems arise with the performance of the SERVICES that may be the result of errors and/or omissions by the CONSULTANT or a failure of the CONSULTANT to otherwise perform in accordance with this Contract, the CONSULTANT and the DEPARTMENT will follow and abide by a decision reached by the Dispute Resolution Process (DRP), as described in Exhibit C, dated January 6, 2000, attached to this Contract, unless within thirty (30) days of the conclusion of such a process, the DEPARTMENT or the CONSULTANT rejects the DRP decision in such a manner as described in Exhibit C. It is further agreed that each party to this Contract reserves the right to file a lawsuit in a Michigan court of competent jurisdiction to contest the decisions or rulings of the DRP only at the completion of the DRP and then only if the DRP decision was timely rejected by the respective party in accordance with the requirements of the DRP. The CONSULTANT agrees to be financially responsible for any and all consequential damages incurred by the DEPARTMENT as a result of any errors and/or omissions attributed to the plans or to a failure of the CONSULTANT to otherwise perform in accordance with this Contract, as determined by the DRP and/or a Michigan court of competent jurisdiction.

The CONSULTANT and the DEPARTMENT agree that during construction, time is of the essence in solving problems and avoiding delays. The CONSULTANT and the DEPARTMENT specifically agree to resolve such problems first and afterwards to determine cause and financial responsibility. The CONSULTANT agrees to continue providing the SERVICES under this Contract in accordance with the Progress Schedule or Construction Schedule while participating in the DRP. The CONSULTANT also agrees to participate in the DRP without immediately seeking compensation and agrees that such compensation will be as is later determined by the DRP.

31. For the purposes of this Contract's provisions, a standing neutral (S/N) is defined as a technically trained, educated, and credentialed professional who is active in the planning, design, and construction disciplines. The standing neutral must be capable of objectively listening, analyzing, and evaluating construction related demands or claims which are in dispute.

The standing neutrals may be selected by the DEPARTMENT and the CONSULTANT during the price negotiation process for each individual authorization.

Neither the CONSULTANT nor the DEPARTMENT will replace its S/N without the prior written approval of the other. In the event that either the DEPARTMENT or the CONSULTANT discovers that its selected S/N is no longer available, it will notify the

other within five (5) working days. The DEPARTMENT or the CONSULTANT will submit the name and a summary of the qualifications of its proposed replacement S/N within thirty (30) days of the time that it becomes aware that the previous S/N is no longer available. In the event that the CONSULTANT and the DEPARTMENT are not able to reach agreement on the replacement S/N, the DEPARTMENT may terminate this Contract.

32. The CONSULTANT and the DEPARTMENT agree that the DEPARTMENT will contract with the S/N(s) selected by both the CONSULTANT and the DEPARTMENT. The DEPARTMENT will reimburse the S/N(s) for hours worked at a rate established in the individual contract plus expenses, in accordance with Section 16(b), 16(f), and 16(h) and subject to all necessary approvals, including, but not limited to, the Michigan Department of Civil Service and the State Administrative Board. The CONSULTANT will reimburse the DEPARTMENT for fifty percent (50%) of these costs. The contract and reimbursement of the third S/N, if any, will be subject to the provisions and limitations set forth in this section.
33. The CONSULTANT and the DEPARTMENT specifically agree not to separately make contact with either S/N regarding contract/projected related matters without the presence or agreement of the other.
34. The CONSULTANT and the DEPARTMENT each specifically agrees not to give or receive compensation, honorariums, gifts, or any transmittal of value to or from an S/N associated with this Contract or any other contract between these parties except as a part of the DRP.
35. With regard to nondiscrimination and Disadvantaged Business Enterprise (DBE) requirements:
 - a. In connection with the performance of SERVICES under this Contract, the CONSULTANT (hereinafter in Appendix A referred to as the “contractor”) agrees to comply with the State of Michigan provisions for “Prohibition of Discrimination in State Contracts,” as set forth in Appendix A, dated March 1998, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.
 - b. During the performance of this Contract, the CONSULTANT, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the “contractor”), agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2003, attached hereto and made a part hereof. This provision will be included in all subcontracts related to this Contract.

- c. The CONSULTANT will carry out the applicable requirements of the DEPARTMENT's DBE program and 49 CFR Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 1, 2005, attached hereto and made a part hereof.
- 36. Public Act 533 of 2004 requires that payments under this Contract and all AUTHORIZATIONS hereunder be processed by electronic funds transfer (EFT). The CONSULTANT is required to register to receive payments by EFT at the Contract & Payment Express website (www.cpexpress.state.mi.us).
- 37. The CONSULTANT specifically agrees that in the performance of the SERVICES herein enumerated, by itself, by an approved subcontractor, or by anyone acting on its behalf, it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits applicable to the entry into and performance of this Contract.
- 38. In addition to the protection afforded by any policy of insurance, the CONSULTANT agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT, the FHWA, and all officers, agents, and employees thereof:
 - a. From any and all claims by persons, firms, or corporations for labor, materials, supplies, or services provided to the CONSULTANT in connection with the CONSULTANT's performance of the SERVICES, and
 - b. From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, and response and cleanup costs, and for attorney fees and related costs arising out of, under, or by reason of the CONSULTANT's performance of the SERVICES under this Contract, except claims resulting from the sole negligence of said indemnitee, its agents, or its employees.

The DEPARTMENT will not be subject to any obligations or liabilities by contractors of the CONSULTANT or their subcontractors or any other person not a party to the contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the CONSULTANT will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under this Contract that results in claims being asserted against or judgments being imposed against the State of Michigan, the DEPARTMENT, the Michigan State Transportation Commission, and/or the FHWA, as applicable.

In the event that the same occurs, it will be considered as a breach of this Contract, thereby giving the State of Michigan, the DEPARTMENT, the Michigan State Transportation Commission, and/or the FHWA, as applicable, a right to seek and obtain

any necessary relief or remedy, including, but not limited to, a judgment for money damages.

39. The CONSULTANT's signature on this Contract constitutes the CONSULTANT's certification of "status" under penalty of perjury under the laws of the United States in respect to 49 CFR Part 29 pursuant to Executive Order 12549.

The certification included as a part of this Contract as Attachment A is Appendix A of 49 CFR Part 29 and applies to the CONSULTANT (referred to in Appendix A as "the prospective primary participant").

The CONSULTANT is responsible for obtaining the same certification from all subcontractors under this Contract by inserting the following paragraph in all subcontracts:

"The subcontractor's signature on this Contract constitutes the subcontractor's certification of 'status' under penalty of perjury under the laws of the United States in respect to 49 CFR Part 29 pursuant to Executive Order 12549. The certification included as a part of this Contract as Attachment B is Appendix B of 49 CFR Part 29."

This certification is required of all subcontractors, testing laboratories, and other lower tier participants with whom the CONSULTANT enters into a written arrangement for the procurement of goods or services provided for in this Contract.

40. The CONSULTANT's signature on this Contract constitutes the CONSULTANT's certification that to the best of his or her knowledge and belief:
- a. No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each failure.

The prospective participant also agrees that by submitting his or her bid or proposal, he or she will require that the language of this certification be included in all lower tier subcontracts that exceed One Hundred Thousand Dollars (\$100,000.00) and that all such sub-recipients will certify and disclose accordingly.

41. In accordance with 1980 PA 278, MCL 423.321 et seq; MSA 17.458(22) et seq, the CONSULTANT, in the performance of this Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) separate occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the national Labor Relations Act, 29 USC 158. The DEPARTMENT may void this Contract if the name of the CONSULTANT or the name of a subcontractor, manufacturer, or supplier utilized by the CONSULTANT in the performance of this Contract subsequently appears in the register during the performance of this Contract.
42. The CONSULTANT agrees to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the CONSULTANT receives from the DEPARTMENT. The CONSULTANT agrees further to return retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement from these time frames may occur only upon receipt of written approval from the DEPARTMENT. These requirements are also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR, Part 26, as amended, and does not confer third-party beneficiary right or other direct right to a subcontractor against the DEPARTMENT. This provision applies to both DBE and non-DBE subcontractors.

The CONSULTANT further agrees that it will comply with 49 CFR, Part 26, as amended, and will report any and all DBE subcontractor payments to the DEPARTMENT semi-annually in the format set forth in Appendix G, dated June 1, 2001, attached hereto and made a part hereof, or any other format acceptable to the DEPARTMENT.

43. For contracts in excess of One Hundred Thousand Dollars (\$100,000.00):
- a. The CONSULTANT stipulates that any facility to be utilized in the performance of this Contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 7401 et seq., as amended (33 U.S.C. 1251 et seq., as amended, including Pub. L. 100-4), Executive Order 11738, and regulations in implementation thereof (40 CFR Part 15), is not listed on the date of contract award on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
 - b. The CONSULTANT agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to CONSULTANT and SERVICES under this Contract.
 - c. The CONSULTANT will promptly notify the DEPARTMENT and the U.S. EPA, Assistant Administrator for Enforcement, or the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this Contract is under consideration to be listed on the EPA List of Violating Facilities.
 - d. The CONSULTANT agrees to include or cause to be included the requirements of the preceding three (3) paragraphs, (a), (b), and (c), in every nonexempt subcontract.
44. The CONSULTANT agrees that no otherwise qualified individuals with disabilities in the United States, as defined in Section 1630.2 of the Americans with Disabilities Act, Title 42, U.S.C. 12101, will, solely by reason of their disabilities, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Contract.
45. The CONSULTANT agrees that it will not volunteer, offer, or sell its services to any litigation against the DEPARTMENT with respect to any SERVICES it has agreed to perform for the DEPARTMENT under this Contract. Any similar services provided by the CONSULTANT that are not performed under this Contract and do not involve litigation against the DEPARTMENT are not covered by this provision.
46. With regard to claims based on goods or services that were used to meet the CONSULTANT's obligation to the DEPARTMENT under this Contract, the CONSULTANT hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT.

The CONSULTANT shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT with regard to claims based on goods or services that were used to meet the CONSULTANT's obligation to the DEPARTMENT under this Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT as a third-party beneficiary.

The CONSULTANT shall notify the DEPARTMENT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the CONSULTANT's obligation to the DEPARTMENT under this Contract may have occurred or is threatened to occur. The CONSULTANT shall also notify the DEPARTMENT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the CONSULTANT's obligation to the DEPARTMENT under this Contract.

47. Any approvals, reviews, and inspections of any nature by the DEPARTMENT will not be construed as a warranty or assumption of liability on the part of the DEPARTMENT. It is expressly understood and agreed that any such approvals are for the sole and exclusive purposes of the DEPARTMENT, which is acting in a governmental capacity under this Contract, and that such approvals are a governmental function incidental to the professional services under this Contract.

Any such approvals, reviews, and inspections by the DEPARTMENT will not relieve the CONSULTANT of its obligations hereunder, nor are such approvals, reviews, and inspections by the DEPARTMENT to be construed as a warranty as to the propriety of the CONSULTANT's performance, but are undertaken for the sole use and information of the DEPARTMENT.

48. Award of this Contract will not in any manner provide for or imply any agreement on the part of the DEPARTMENT to assign and authorize any specific amount of professional services to the CONSULTANT for performance.
49. No member, officer, or employee of the CONSULTANT during his/her tenure or one (1) year thereafter will have any interest, direct or indirect, in this Contract or the proceeds thereof.
50. The CONSULTANT agrees not to provide any services to a construction contractor for a project for which the CONSULTANT has provided SERVICES to the DEPARTMENT.

The CONSULTANT and its Affiliates agree not to have any public or private interest, and shall not acquire directly or indirectly any such interest in connection with the project, that would conflict or appear to conflict in any manner with the performance of the SERVICES under this Contract. "Affiliate" means a corporate entity linked to the

CONSULTANT through common ownership. The CONSULTANT and its Affiliates agree not to provide any services to a construction contractor or any entity that may have an adversarial interest in a project for which it has provided services to the DEPARTMENT. The CONSULTANT and its Affiliates agree to disclose to the DEPARTMENT all other interests that the prime or sub consultants have or contemplate having during each phase of the project. The phases of the project include, but are not limited to, planning, scoping, early preliminary engineering, design, and construction. In all situations, the DEPARTMENT will decide if a conflict of interest exists. If the DEPARTMENT concludes that a conflict of interest exists, it will inform the CONSULTANT and its Affiliates. If the CONSULTANT and its Affiliates choose to retain the interest constituting the conflict, the DEPARTMENT may terminate the Contract for cause in accordance with the provisions stated in this Contract.

51. The CONSULTANT warrants that it has not employed or retained any company or person other than bona fide employees working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for the CONSULTANT any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the DEPARTMENT will have the right to annul this Contract without liability or, at its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
52. In case of any discrepancy between the body of this Contract and any exhibit(s) hereto, the body of the Contract will govern. In case of any discrepancy between the body of this Contract and any AUTHORIZATION(S) hereof, the body of the Contract will govern.
53. This Contract will take effect upon award and will expire three (3) years thereafter. This Contract may be extended by a written time extension amendment prepared and issued by the DEPARTMENT. The CONSULTANT's signature on this Contract constitutes the CONSULTANT's specific agreement that all provisions of this Contract, unless otherwise amended, are continued through any time period for which the contract is extended by way of such a time extension amendment. Any such extension will not operate as a waiver by the DEPARTMENT of any of its rights herein set forth.

Any AUTHORIZATION will take effect upon issuance by the DEPARTMENT and will expire on the expiration date stated in that AUTHORIZATION, but no later than the expiration date of this Contract.

54. This Contract will become binding on the parties and of full force and effect upon signing by the authorized representatives of the CONSULTANT and the DEPARTMENT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective official(s) of the CONSULTANT, a certified copy of which resolution will be sent to the DEPARTMENT with this Contract, as applicable.

IN WITNESS WHEREOF, the parties have caused this Contract to be awarded.

«VENDOR»

By: _____
Title:

By: _____
Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: _____
Title: Department Director